



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2015/0066

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50550081
Dated: 23 February 2015**

Appellant: MS ROSE GRAHAM

Respondent: THE INFORMATION COMMISSIONER

Heard at: Breams Buildings, London

Date of hearing: 29 July 2015

Date of decision: 31 July 2015

**Before
CHRIS RYAN
(Judge)
and
ROSALIND TATAM
DAVID WILKINSON**

Attendances:

The Appellant appeared in person.
The Respondent did not appear and was not represented.

Subject matter: Vexatious or repeated requests s.14

**Cases: Information Commissioner v Devon CC and Dransfield
[2012] UKUT 440 (AAC).**

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is refused

REASONS FOR DECISION

1. We have decided that the Information Commissioner was right to conclude, in the Decision Notice under review, that the Appellant's information request had been properly rejected in reliance on section 14 of the Freedom of Information Act 2000 ("FOIA").

Background

2. On 22 March 2011 the Information Commissioner issued a Decision Notice (reference FS50276199 and referred to her as "the First Decision Notice") concerning 26 sets of requests for information made by the Appellant in this appeal, all relating to the care her mother received from Imperial College Healthcare NHS Trust ("ICH"), which she believed contributed to her mother's death in 2009. One of the requests (identified as Request 5 in an annex to the First Decision Notice) included questions about the absence on maternity leave of a particular member of ICH's medical staff during the period when the Appellant's mother was a patient. The Information Commissioner decided that:
 - a. Some of the requests had been answered, either in whole or in part (this included one part of Request 5);
 - b. The ICH did not hold some of the requested information;
 - c. Some of the information sought could not be disclosed under FOIA because it was either the Appellant's own personal data or its disclosure would be contrary to the personal data rights of certain third parties; and
 - d. ICH had been entitled to refuse the remaining requests under FOIA section 14.
3. The effect of section 14 is that a public authority, such as ICH, is entitled to refuse to comply with the disclosure obligations imposed on it by FOIA if the request is vexatious. There is no statutory definition of

what is meant by that term but guidance has been provided by the Upper Tribunal in the case of Information Commissioner v Devon CC and Dransfield [2012] UKUT 440 (AAC)¹.

4. The Appellant appealed the First Decision Notice to this Tribunal, which allowed the appeal in respect of one ground of appeal but struck out the remaining grounds on the basis that they had no reasonable prospect of succeeding. Although the Appellant sought permission to appeal the decision this was refused by a judge of this Tribunal and the application for permission to appeal was not renewed before the Upper Tribunal. However, the Appellant did submit a request for information to the Information Commissioner in respect of the investigation which underlay the First Decision Notice. The copy correspondence provided to her in response to that request caused her grave concern on a number of issues. It appeared to her that the Information Commissioner's staff had:
 - a. provided considerable assistance to ICH in respect of its defence to her complaint, while being very much less helpful to the Appellant herself;
 - b. failed to take adequate steps to test or verify the information provided by the ICH; and
 - c. decided to support ICH at the outset of the investigation and failed thereafter to carry through its investigation with appropriate care or rigour.

The Appellant and her family had found it particularly distressing to find that ICH had made a number of allegations about her which were perceived to be misleading and belittling.

5. During the hearing before us the Appellant said that her recollection was that the Information Commissioner had provided his response to her information request in around August or September 2011.

The Appellant's request for information

6. On 5 June 2014, almost three years after being provided with the information from the Information Commissioner's investigation file, the Appellant submitted a new request for information to ICH. It is set out in full at paragraph 4 of the Decision Notice from which this appeal arises (No FS50550081 issued on 23 February 2015, and referred to below as "the Second Decision Notice"). It may be seen that the request consisted of 6 parts, all relating to the hospital treatment

¹ The Upper Tribunal's decision was upheld by the Court of Appeal – Dransfield v Information Commissioner [2015] EWCA Civ 454.

provided to the Appellant's mother and some relating specifically to the absence on maternity leave of the member of staff referred to in paragraph 2 above.

7. ICH refused the request for information and the Information Commissioner decided in the Second Decision Notice that it had been entitled to do so, in reliance on FOIA section 14. He concluded that, given the past investigation of the treatment afforded to the Appellant's mother, there was little value in the further pursuit of the questions posed and that the Appellant's persistence in this respect rendered her information request vexatious.

The appeal to this Tribunal

8. The Appellant appealed the Second Decision Notice to this Tribunal on 18 March 2015 and exercised her right to have it determined at a hearing rather than on the papers. The Information Commissioner filed a Response to the Appeal and assisted in the preparation of a bundle of relevant papers (subsequently expanded by additional papers which the Appellant wished to have included), but did not attend the hearing.
9. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.
10. We have reviewed the Information Commissioner's reasoning in the Second Decision Notice. Although he did not make specific reference to the guidance provided by the Upper Tribunal in *Dransfield* we are satisfied that he applied to the facts of the case those of the indicative tests proposed by the Upper Tribunal that were relevant to the circumstances of this case and that he reached the correct conclusion.
11. The Appellant's case, as set out in her Grounds of Appeal and expanded upon during the hearing before us, did not challenge the detailed line of reasoning adopted by the Information Commissioner. She acknowledged the overlap between the information request under consideration in this appeal and that dealt with in the First Decision Notice, but explained that she had decided that the only way in which she could bring to light her complaints about the conduct of the

investigation underlying the First Decision Notice was to submit a new information request in the terms that she did. Her Grounds of Appeal made clear that she wished the new request to operate as a trigger for a review of that earlier investigation and of the dismissal of a complaint she had made to the Information Commissioner's office in respect of it. The outcome she sought was expressed in these terms:

"We want the incorrect decision notice to be overturned. We would like there to be an investigation of how the ICO checks the validity of the material it is supplied by organisations that supply it false stories and finally the authorities that supply the ICO with false data should be fined, name and shamed. Also [name and job title of Information Commissioner's staff member who considered the Appellant's complaint] should leave."

It will immediately be apparent that all the relief sought, other than the overturning of the Second Decision Notice, falls outside the scope of the Tribunal's jurisdiction under FOIA section 58.

12. The Appellant was faced with a number of difficulties in presenting her case in this way (quite apart from the failure to challenge the Information Commissioner's application of *Dransfield* criteria to the facts). First, the reason for submitting the information request (the perceived shortcomings of the earlier investigation) have no clear connection with the subject matter of the request (the medical treatment of her mother and the maternity leave of one member of the medical team that treated her). Secondly, the subject matter itself clearly duplicated parts of the information requests that were found in the First Decision Notice to have been vexatious. Thirdly, the time for pursuing an appeal against the First Decision Notice had long since passed by the time the Appellant was provided with copies of correspondence from the Information Commissioner's file and further time has elapsed since then. Finally, the Appellant was not able to demonstrate that evidence had been fabricated (as she had previously claimed but did not pursue at the hearing) or that the earlier investigation had been so seriously flawed, by collusion and/or pre-judgment, as to undermine the First Decision Notice.
13. Our conclusion is that, although we understand and respect the Appellant's strongly held views about the way she and her family have been treated by both ICH and the Information Commissioner, it was an improper use of the procedures established under FOIA to use a new request for information, covering the same ground as one previously rejected under FOIA section 14, to reopen a complaint against the

Information Commissioner's staff and/or to have the previous rejection reconsidered.

14. The appeal must therefore be refused.

15. Our decision is unanimous.

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Judge
29 July 2015